

REMARKS

The present remarks and amendments are in response to the final Office Action dated April 14, 2010. In the Office Action, the Examiner rejected Claims 1 and 3-17.

Claims 1, 12, and 13 are currently amended. New Claims 18-25 are added. The remaining claims remain unchanged. The Applicant hereby submits arguments and amendments in favor of Claims 1, 3-25. Accordingly, Claims 1, 3-25 are currently pending and are believed to be in condition for allowance.

COMMUNICATION WITH EXAMINER

The Applicant's Attorney spoke with the Examiner by telephone on Tuesday, July 13, 2010 to discuss some proposed amendments with regard to the acid source. Pending a further search by the Examiner and without making any commitment on the phone, the Examiner considered that this proposed amendment to include the acid source in the main independent claims may overcome the previously cited art in relation to at least the claim rejections based upon 35 U.S.C. §102. The Applicant also believes that the claim amendments above also define the present claims over the prior art based upon 35 U.S.C. 103. The Applicant's Attorney encourages the Examiner to contact him to further discuss the application if the present claims are not allowed. The telephone number is (401) 273-4446 or email: djh@barjos.com.

REQUEST FOR CONTINUED EXAMINATION (RCE)

Since we are under a final Office Action, the Applicant has submitted a Request for Continued Examination for another round of patent prosecution. The required fee for the extension of time is submitted herewith.

REJECTION OF CLAIMS UNDER 35 U.S.C. §102 (b)

In the Office Action, Claims 1, 3-4, 7-9, and 11 were rejected under 35 USC §102(b) as being anticipated by Patel (U.S. Pat. No. 6,051,242). Also, Claims 1, 7, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Leo (U.S. Pat. No. 4,734,333). Also, Claims 1, 3-5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tobias (U.S. Pat. No.

4,413,037). Also, Claims 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel.

To further clarify main independent Claims 1 and 13, the Applicant hereby amends Claim 1 and 13 to include at least one intumescent ingredient component comprising an acid source in combination with another intumescent ingredient. The three references cited (Patel, Leo and Tobias) do not disclose at least one intumescent ingredient component as an acid source in combination with another intumescent ingredient. The Examiner has cited in the present Office Action that Patel, Leo, and Tobias only indicate the at least one intumescent ingredient component as a gas source. Based upon the arguments and amendments above, the Applicant requests that the rejections listed above under 35 U.S.C. 102 be withdrawn. Based upon the revised Claim 1 and 13, the three references cited do not anticipate the present invention and are therefore in condition for allowance. Dependent Claims 3-5 7-11, and 14-17 are dependent from independent Claims 1 and 13 respectively and therefore are also considered to be in condition for allowance.

REJECTION OF CLAIMS UNDER 35 U.S.C. §103 (a)

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leo in view of Levine (U.S. Pat. No. 5,356,568). The Applicant respectfully disagrees with this rejection for the following reasons.

The Examiner also rejects claim 12 for obviousness, and that this rejection may be relevant to the line of argument presented above in support of amended claims 1 and 13. For the reasons stated above, Leo does not disclose at least one intumescent ingredient component comprising an acid source in combination with another intumescent ingredient. According to the Examiner, Leo discloses only a gas source as an intumescent ingredient and is therefore missing an element of the claimed present invention.

Even if the person of ordinary skill in the art were to look at Leo, which is denied, he wouldn't combine it's disclosure with that of Levine (US 5,356,568) since Levine relates to a very different type of coating (specifically the resin of Levine is not a solid thermoplastic, no monomeric component is present, and there is no radical reaction). Any attempt to combine the disclosure of Leo with Levine could arrive at any number of possible coating permutations, and

any suggestion that a coating as required by claim 1 would inevitably result can only be based upon hindsight. Based upon the arguments above, the rejection of Claim 12 should be withdrawn. Furthermore, since Claim 12 depends from Claim 1, which is allowable, Claim 12 is also in condition for allowance.

PROVISIONAL DOUBLE PATENTING

Claims 1, 3-8 and 12-17 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-16 of co-pending Application No. 11/722,347. Also, Claims 1, 3-9 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-20 of co-pending Application No. 11/722,348.

The Applicant has duly noted the provisional double patenting issues and will address them at later time, if necessary, when it is known what form the relevant claims of Application No. 11/722,347 and Application No. 11/722,347 may take.

NEW CLAIMS 18-25

New Claims 18-25 are added. Support for the Claims 18-25 may be found in the specification generally at pages 8-10 of the original specification. A required fee for adding three new dependent claims is hereby enclosed. No new matter has been added.

CONCLUSION

Accordingly, Claims 1, 3-25 are currently pending and are believed to be in condition for allowance and the application ready for issue. Corresponding action is respectfully solicited.

The Director is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our Deposit Account Number 02-0900.

Respectfully submitted,

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